



## General Terms and Conditions

Unless otherwise agreed in writing, the following terms and conditions apply to all contracts for spare parts, service or repairs, sales of equipment or supplies, inspection or consulting submitted by L.A. Maritime Services Inc. (hereinafter "LAMS") and any order confirmed by LAMS.

### I. GENERAL TERMS

#### 1. Contract Agreement

1.1 LAMS quotations and proposals are subject to confirmation by LAMS upon receipt of customer's acceptance or purchase order and no contract to perform or supply shall exist in the absence of written confirmation. No person is authorized to enter into an oral contract on behalf of LAMS.

1.2 The entire contract is embodied in this writing, the LAMS quotation or proposal to which these terms and conditions are attached or associated, and the provisions of LAMS' confirmation of customer's acceptance. These writings constitute the final expression of the parties' agreement, and together constitute a complete and exclusive statement of the terms and conditions of the Contract.

#### 2. Law

2.1 The Contract is subject to and shall be interpreted in accordance with the Admiralty and Maritime law of the United States of America and, in all other respects, the law of the State of California.

#### 3. Taxes And Customs Duty

3.1 All prices are exclusive of value added, sales and excise taxes, customs duties, import fees and government surcharges and assessments, any or all of which are customer's responsibility.

#### 4. Terms Of Payment

4.1 Payment in full must be made thirty (30) days from date of invoice.

4.2 Unpaid amounts shall be subject to interest at one and one-half percent (1½%) per month from the date of invoice. LAMS shall have no warranty liability while customer is delinquent on any payment.

#### 5. Liens

5.1 Customer agrees that LAMS shall have a maritime lien against any vessel upon which or for the benefit of which any service or equipment is furnished to the extent of amount not paid and a mechanic's lien for the value of service and a security interest in any equipment furnished to shore installations. Customer agrees to sign UCC-1 Financing Statements or other confirmations of lien, if required by LAMS.

#### 6. Drawings And Printed Material

6.1 Drawings, illustrations, printed and electronic material and data furnished by LAMS are for customer's guidance only and are not binding.

6.2 All drawings, illustrations, printed and electronic material and data remain the property of LAMS and /or the companies

represented by LAMS and may not be reproduced, disclosed to or used by any third party or used commercially in any way without the prior written consent of LAMS.

#### 7. General Limited Warranty

7.1 Section II, Paragraph 13, and Section III, Paragraph 17 set forth the exclusive remedies for claims based upon defective service, design, parts, equipment, supplies, or repairs whether claims are based upon contract, warranty, negligence, tort or otherwise. All liability shall cease upon the expiration of the applicable period. NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. The warranties expressed herein are exclusive of all other written, implied, oral or statutory warranties.

#### 8. Disputes

8.1 Should any dispute arise between LAMS and customer, the matter in dispute shall be referred for binding arbitration under the Federal Arbitration Act ("FAA") to three persons at California, one technical/engineering person to be chosen by each party, and the third, a lawyer, retired judge or professional neutral (with not less than 10 years' experience in resolving maritime disputes), by the two so chosen. If the party with whom arbitration is demanded fails to appoint an arbitrator within 20 days of receipt of demand by registered letter, then the demanding party shall appoint the other party's arbitrator. The decision of the arbitrators, or that of any two of them, shall be final, and, for the purpose of enforcing any award, may be entered as a judgment in any Court of competent jurisdiction and/or any Court of general or admiralty jurisdiction located in the City of Los Angeles, State of California, to whose jurisdiction the parties hereby submit which court shall have the power to modify the award only to extent permitted under the FAA.

All pre-judgment remedies under the FAA are available

The arbitrators shall have the power to award costs, fees and reasonable legal expenses in favor of the prevailing party.

8.2 Customer must commence arbitration within one year of the date the cause of action accrues.

#### 9. Limitation Of Liability

9.1 In no case shall LAMS be liable for any claim (whether in contract, tort, products liability or otherwise) in an amount greater than the contract price (minus third party costs such as materials costs, taxes and delivery charges) for the service, repair or part giving rise to the claim.

9.2 The price charged by LAMS and the other terms herein specifically take into account that each party shall have no liability under any circumstance arising in contract or tort for any incidental, consequential, exemplary or punitive damages including, but not

limited to, loss of profits, delay, loss of use, property or cargo loss and personal injury or death.

9.3 Customer acknowledges that maritime equipment and supplies are designed to be handled, used and operated by trained professionals. Customer indemnifies, defends and hold LAMS harmless from any suit, cost, expense or other liability (whether in contract, tort, products liability or otherwise) from any failure by Customer or others person to handle, use or operate any equipment or supplies provided by or serviced or repaired by LAMS. Unless LAMS is expressly hired to provide training, Customer is solely responsible to assure that all persons, who handle, use or operate any equipment or supplies provided by or serviced or repaired by LAMS, are properly trained and licensed. Also Customer acknowledges that insurance is commercially available to protect customer from liabilities and risks incident to its operation; that it is in the best interests of both parties and a part of the consideration hereof for customer to so protect itself; and that customer will defend, hold LAMS harmless and indemnify LAMS from any and all claims by customer or third persons arising out of the performance of this contract, except if due to negligence or willful misconduct of LAMS.

#### 10. Customer Compliance/Site Conditions/Delays

10.1 Except where LAMS is hired to correct an identified violation, Customer represents to LAMS that Customer and any properties at which or on which LAMS is to perform any services to deliver any equipment or supplies are in compliance with all applicable laws. Customer is responsible for such compliance at all times. LAMS assumes no responsibility for environmental risks or compliance at customer's vessel or premises and customer agrees to safeguard all environmental concerns at its own risk and expense with which LAMS will cooperate.

10.2 Customer is advised that LAMS is subject to the United State Foreign Corrupt Practices Act which prohibits the bribery of government officials or agents. If for any reason LAMS is required to or requested to take any action in violation of any applicable laws LAMS may stop work and shall be entitled to compensation for the value of the work performed based on the proportionate amount of work performed, or supplies and equipment delivered prior to such stoppage.

10.3 Any agreed date for completion of the work or delivery of equipment or supplies is subject to force majeure. Thus, LAMS is not responsible for delays or non-performance directly or indirectly caused or contributed to by circumstances beyond its control including, but not limited to, war or warlike conditions, civil war, insurrection, riots, mobilization, strikes, lockout (including strikes and lock-outs within LAMS sub-suppliers), shortage of working hours, delays in obtaining third party (including government agency and port approvals), prohibited entry and departure, delay in delivery of parts and materials, transportation difficulties, insufficient power supply (including air), shortage of labor, catastrophes of nature, ice obstacles, bad weather or act of God.

10.4 In case of delay due to force majeure the deadline of completion of the work or delivery of the equipment or supplies, as the case may be, will be extended the same number of working days as the delay by reason of force majeure. This shall also be the case when the force majeure cause does not arise until after passing of the deadline for execution of the work or delivery.

10.5 When circumstances arise which will delay the completion of the work or delivery of equipment or supplies, LAMS shall inform customer, stating the reason for the delay and whether it can be

referred to force majeure, and shall inform customer about the projected duration of the delay.

## II. SERVICE TERMS

### 11. Technical Service and Engineering Service

11.1 "Technical service" is any kind of technical advice or guidance and excludes management, performance, conduct or supervision of repairs.

11.2 "Engineering service" is provided when LAMS employs the labor to install, repair, modify or maintain clients' machinery, parts or equipment at any location.

11.3 When ordering Technical or Engineering service, the time, place and completion date must be specified by the customer. If time, place or completion date are subsequently altered for any reason by the customer, including cancellation, LAMS may cancel the order and/or collect the full price and resulting expenses.

11.4 If alteration of the original order is agreed during the execution of the work, the time of completion will be extended accordingly.

11.5 If persons not in the employ of LAMS or independent contractors assist in execution of the work, LAMS is not responsible for delays, errors or defaults caused directly or indirectly by such persons.

### 12. Repair and Reconditioning of Parts

12.1 All parts sent to LAMS by client for repair, reconditioning, exchange, adjustment, testing, measurement or other treatment are sent at client's risk and expense.

12.2 LAMS shall not be responsible for any damages to such parts while under its control, even if caused by negligence, unless caused by the gross negligence or willful act of LAMS, its employees or agents.

12.3 If LAMS deems such parts unfit for repair or reconditioning, they will be disposed of in accordance with Customer's instructions and at Customer's sole cost.

### 13. Limited Warranty

13.1 LAMS warrant that the service will be performed in a workmanlike manner in accordance with sound practices. If the service performed by LAMS is not in accordance with the contract and customer has claimed in due time (see Section II, Paragraph 15), LAMS shall redo the Technical or Engineering service, provided the invoice has been paid.

13.2 In the event LAMS chooses not to redo the service or repair, customer may select another workshop. In such a case, the liability of LAMS is limited to the cost to LAMS to redo the service or repair under similar circumstances, but in no event more than the actual amount expended by customer, whichever is less.

13.3 LAMS shall not be responsible for delays or defects attributed to supplies or services provided by parties chosen by customer.

13.4 Customer agrees that LAMS shall not be liable for any consequences of delay including, but not limited to, those caused by:

- (a) Force majeure;
- (b) Failure of customer, its agents or employees to follow verbal or written instructions or directions provided by LAMS;
- (c) Vessel conditions and operations including, but not limited to, presence of cargo on board during docking or servicing, improperly cleaned cargo tanks limiting ability to work, towing, shifting, mooring or sea trial testing (whether the machinery is operated and controlled in whole or in part by LAMS personnel during the maneuvers) or contaminated, impure, improper or insufficient air, fuels, lubricants or water.

13.5 The remedy provided by this section is exclusive and no other contractual or legal remedy may be invoked by customer. See Section I, Paragraph 7.

#### 14. Scope Of Engagement

14.1 If LAMS has been retained to furnish service with regard to the engine(s) or other systems described in the work order or service request with respect to problem(s) described therein, LAMS will furnish the requested service only on the condition that the service person is not expected to trouble-shoot, identify, adjust and/or repair every problem that exists, whether seen or unseen and LAMS cannot guaranty that all problems or any specific problem can be resolved. The failure of LAMS to resolve a problem does not result in any reduction or modification in the amount due under the contract between LAMS and Customer.

14.2 LAMS may rely on the information and instructions provided by Customer and its officers, managers and representatives. However no LAMS employee or representative may enter into an amendment to the contract between LAMS and Customer unless it is in writing and signed by Customer and a general manager, vice president or president of LAMS

14.3 LAMS understands that other personnel from time to time maintain, operate and service the engine and its appurtenances but it cannot be responsible for the correctness of those efforts (even though operationally related to the service requested) nor does it undertake to evaluate those efforts without written instructions. LAMS assumes no responsibility for the consequences of the efforts of those not directly employed to LAMS.

#### 15. Notice of Defect

15.1 Claims regarding the service performed must be reported immediately after completion of the work concerned and in no event more than three (3) days after completion. Otherwise, LAMS shall have no responsibility. However, claims concerning hidden defects in the work performed must be reported within three (3) days after the customer discovers or should have discovered them but no later than three (3) months after completion of the work, when the responsibility of LAMS shall cease. Notice of defects must be furnished in writing and be specific enough for LAMS to identify the problem.

### III. SPARE PARTS/EQUIPMENT

#### 16. Availability, Prices and Delivery

16.1 All quotations or proposals by LAMS are subject to availability at the time of Customer's acceptance. Unless otherwise stated by LAMS, prices are binding for thirty (30) days. All acceptances by customer are subject to confirmation by LAMS.

16.2 Prices are exclusive of packing, transportation, insurance (including property damage, product liability and patent infringement coverage) and taxes.

16.3 Delivery occurs at the point of shipment where risk of loss passes.

16.4 The date of delivery is approximate only. Customer agrees that the date of delivery will be extended by force majeure.

16.5 Delay in delivery shall not entitle customer to cancel the order.

16.6 If delivery is delayed at customer's request, payment shall nevertheless be due after notice to customer that the parts are ready for shipment. Reasonable storage charges shall be paid by client after seven (7) days.

16.7 Customer shall look solely to the manufacturer for any claims related to the performance, design, construction, materials, and

operation of any equipment or supplies and manufacturer shall have the right to assert any defenses or limitations set forth in its terms and conditions or other disclosures which are known by or available to Customer.

#### 17. Limited Warranty

17.1 For a period of six (6) months from the date of shipment, LAMS undertakes at its discretion to repair or replace parts defective in material or workmanship without charge to client for labor or materials. This warranty is subject to proper storage, installation and operation of the parts or equipment by Customer in accordance applicable laws, product manuals, LAMS instructions, and use, maintenance and operation by personnel who are properly trained and licensed. This limited warranty is personal to Customer and cannot be assigned to any other person. No warranty express or implied is made by LAMS with respect to consumable supplies. However equipment and machinery which is defective shall be subject to and Customer's rights and remedies are limited solely to warranties made by the manufacturer.

17.2 Defective items must be returned to LAMS with shipping charges prepaid.

17.3 The above warranty does not apply to damage caused by (i) normal wear and tear; (ii) careless or negligent operation; (iii) materials, designs or installation modifications made by client, its employees or agents; or (iv) latent or design defects not discoverable by due diligence.

17.4 All defective parts replaced pursuant to the above warranty become the property of LAMS.

17.5 Delivery of replacement or repaired parts is at the point of shipment.

17.6 The above warranty applies also to replacement and repaired parts furnished by LAMS.

17.7 The remedy provided by this section is exclusive and no other contractual or legal remedy may be invoked by client. See Paragraph 7, Section I.